EUROPEAN COMMISSION

Brussels,
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Embargo VISTA illimité (*)

Subject: **State Aid / Poland**
SA.41248 (2015/N) - Support towards interests related to investment loans – large enterprises
SA.41289 (2015/N) - Granting aid in the form of loan payment guarantees - large enterprises

Sir,

The European Commission ("the Commission") wishes to inform Poland that, having examined the information supplied by your authorities on the State aid schemes referred to above, it has decided not to raise any objections to the relevant schemes as they are compatible with the Treaty on the Functioning of the European Union[1] ("TFEU").

In taking this decision the Commission has relied on the following considerations:

1. PROCEDURE

(1) By letter of 13 March 2015, registered by the Commission on the same day, Poland notified, according to Article 108(3) TFEU, the aid scheme SA.41248 (2015/N). By letter of 18 March 2015, registered by the Commission on the same day, Poland notified the aid scheme SA.41289 (2015/N) .

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1 OJ C 83, 30.3.2010, p. 47.

(*) Ce timbre porte sur l'ensemble des documents qui composent le dossier.

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(2) By letters dated 7 May 2015, 16 July 2015, 18 December 2015, 19 April 2016, 11 May 2016, 27 September 2016, the Commission asked for additional information, which the Polish authorities provided on 26 May 2015, 13 August 2015, 19 February 2016, 11 May 2016 and 21 December 2016. Poland also submitted additional information on 10 September 2015, 26 October 2015, 20 April 2016, 7 June 2016, 29 July 2016 and 20 February 2017.

(3) The Commission covers both notified schemes under one single decision, as they do not differentiate by the aid objective but only by the aid instrument. However, the Commission has transferred the part on aid towards damages caused by adverse climatic events notified under the notified scheme SA.41289 to the likewise notified State aid scheme SA.41202[2], which primarily covers such aid and which is also based on the same national legal basis as the two schemes covered by the present decision.

2. DESCRIPTION

2.1. Title

(4) Support towards interests related to investment loans – large enterprises and Granting aid in the form of loan payment guarantees – large enterprises

2.2. Objective

(5) With the present notification the Polish authorities wish to introduce aid schemes supporting aid for investment in tangible assets and intangible assets:

(a) on agricultural holdings linked to primary agricultural production;

(b) in connection with the processing of agricultural products.

(6) The Polish authorities confirmed that the investments must be in accordance with the EU and national legislation on environmental protection. They also explained that where a proposed investment may have a negative impact on the environment, its eligibility will be declared only after an environmental impact assessment, which will be carried out in accordance with the applicable rules for the type of investment concerned. Such assessment will be carried out and the development consent will be granted for the investment project concerned before the date of granting the individual aid.

(7) The Polish authorities made reference to the Polish Rural Development Programme for the period 2014-2020 ("the Polish RDP") explaining that the notified schemes are designed in a consistent manner with Regulation No 1305/2013[3] and that they are consistent with the Polish RDP, in particular with

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2 Approved by the Commission decision C(2015)7054 of 12 October 2015 on State aid – Poland - SA.41202 (2015/N) - Support towards interests and guarantees/ sureties related to loans for resuming agricultural production and restoring fixed assets – large enterprises.

3 Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), OJ L 347, 20.12.2013, p. 487.

EAFRD priority 2a "Improving the economic performance of all farms and facilitating farm restructuring and modernisation, notably with a view to increasing market participation and orientation as well as agricultural diversification" and the measure 8.2.4.3.3 "Modernisation of agricultural holdings" which also provides for investment support for agricultural holdings. In this respect, the Polish authorities explained that unlike under the co-financed measures where aid is paid after the investment has been completed (refund), interest rate subsidies are applied from the beginning of the period credit, so that the beneficiary receives financial assistance from the start of the investment. In addition, under the present schemes the support can take form of guarantees and sureties which are not provided for under the Polish RDP.

2.3. Budget

(8) The aid will be financed from national budgetary resources.

(9) For SA.41248 (2015/N), the total budget amounts to PLN 276 million (ca. EUR 64 million).

(10) For SA.41289 (2015/N), the total budget amounts to PLN 22.5 million (ca. EUR 5 million).

2.4. Duration

(11) From the date of the Commission approval until 31 December 2020.

2.5. Legal basis

(12) Cabinet Regulation of 27 January 2015 on the detailed scope and the manner of performing certain tasks of the Agency for Restructuring and Modernisation of Agriculture[4] (short: 'the Cabinet Regulation') [R*ozporządzenie Rady Ministrów z dnia 27 stycznia 2015r. w sprawie szczegółowego zakresu i sposobów realizacji niektórych zadań Agencji Restrukturyzacji i Modernizacji Rolnictwa*, *Dz.U. 2015, poz. 1608, z późn. zm.*] and its implementing provisions.

2.6. Aid beneficiaries

(13) Large undertakings active in the sectors of primary agricultural production and of processing of agricultural products.[5]

(14) The number of beneficiaries is estimated to be over 1000 in the case of the scheme SA.41248 and between 101-500 in the case of the scheme SA.41289.

(15) The Polish authorities confirmed that the aid will not be granted to undertakings in difficulty within the meaning of point 35.15 of the European Union Guidelines

[4] Hereinafter: "the Agency".

[5] The corresponding aid for small and medium enterprises is granted under the following block-exempted aid schemes: SA.40668 (2015/XA) and SA.40669 (2015/XA).

for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020[6] (the "Guidelines").

(16) Poland committed to suspend the payment of the notified aid if the beneficiary still has at its disposal an earlier unlawful aid that was declared incompatible by a Commission decision (either concerning an individual aid or an aid scheme), until that beneficiary has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid including the corresponding recovery interest.

2.7. Aid form

(17) The aid will be granted in form of:

(a) interest subsidies,

(b) loan guarantees/sureties.

(18) The Polish authorities explained that the aid amount will be calculated as the gross grant equivalent of the aid. Formulas according to which the gross grant equivalent is calculated are defined in the Cabinet Regulation of 1 August 2004 on detailed method of calculation of state aid granted in different forms[7] and are based on the Communication from the Commission on the revision of the method for setting the reference and discount rates[8] and the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees[9] ("Commission Notice"). As aid will be granted in several instalments, the Polish authorities confirmed that aid/eligible costs will be discounted to its/their value at the moment of granting the aid. The interest rate to be used for discounting purposes will be the discount rate applicable on the date of granting the aid.

(19) As to the calculation of a guarantee or surety for a bank loan, the Polish authorities explained that the aid amount in form of guarantees or sureties will equal the difference between (a) the discounted value of the 'premium', calculated by applying a rate that covers the normal risk associated with a guarantee or surety, the administrative costs of the scheme and the return on capital that would have been determined in an equivalent scheme not constituting an aid scheme, in accordance with the criteria outlined in the Commission Notice, and (b) the discounted value of the premium for provision by the Agency of a guarantee or surety in accordance with the formula set out below:

$$W_G = O_Z – Pr$$

where:

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[6] OJ C 204, 1.7.2014, p. 1, as amended by Commission Notice amending the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 (OJ C 390, 24.11.2015, p.5).

[7] *Rozporzadzenie Rady Ministrów z dnia 11 sierpnia 2004 r. w sprawie szczegółowego sposobu obliczania wartości pomocy publicznej udzielanej w różnych formach, Dz.U. Nr 194, poz. 1983, z późn. zm.*

[8] OJ C 14, 19.01.2008, p. 6.

[9] OJ C 155, 20.6.2008, p. 10.

W_G amount of aid granted by the Agency in the form of a guarantee or surety,

O_Z discounted value of the 'premium' calculated by applying a rate - set in accordance with the criteria outlined in section 3.4 of the Commission Notice - that covers the normal risk associated with provision of a guarantee or surety, the administrative costs of the scheme and the return on capital,

Pr discounted value of the premium for provision by the Agency of a guarantee or surety.

(20) The table below sets out the applicable rates in line with the rating given to the borrower by a bank in accordance with the bank's internal risk analysis procedures (the likelihood of borrowers defaulting):

Credit quality	Internal ratings given by the bank granting a loan to a borrower	Rate**			
		A - Risk coverage	B - Administrative costs	C - Return on capital	Total (A+B+C)
Highest quality	AAA	2.19%	0.5%	2.0%	4.69%
Very strong payment capacity	AA+, AA, AA-				
Strong payment capacity	A+, A, A-			4.0%	6.69%
Adequate payment capacity	BBB +, BBB, BBB-			6.0%	8.59%
Payment capacity is vulnerable to adverse conditions	BB +, BB, BB-				
Payment capacity is likely to be impaired by adverse conditions	B+, B, B-			8.0%	10.69%
Payment capacity is dependent upon sustained favourable conditions In or near default	CCC +, CCC, CCC-, CC, C, DDD, DD, D				A rate cannot be set*
* If it is not possible to set a rate, there is no basis for providing a guarantee or surety. ** Rates are subject to annual review					

2.8. Aid intensity

(21) The maximum aid intensity will be 40% (for the processing sector) and 60% (for the primary agricultural production).

2.9. Description of the aid schemes

(22) The notified aid schemes are based on the Cabinet Regulation, which provides for the following:

(23) The competence to grant aid under the notified schemes lies with the Agency.

(24) Aid consists in interest subsidies on bank loans granted for the partial financing of the investment costs and bank loan repayment guarantees or sureties granted for the partial financing of the investment costs.

(25) The values of bank loans covered by the aid that consists in interest subsidies must not exceed:

(a) for primary agricultural producers:

– 80% of the value of the capital expenditure on implementation of the investment project on an agricultural holding and in any case

– PLN 8 million (approx. EUR 2 million) per beneficiary;

(b) in the processing of agricultural products:

– 70% of the value of the capital expenditure on implementation of the investment project and in any case

– PLN 16 million (approx. EUR 4 million) per beneficiary.

(26) The interest rate on bank loans referred to above may be variable and must not exceed the WIBOR[10] reference rate established for loans on the interbank market granted for three months (WIBOR 3M), increased by no more than 2.5 percentage points.

(27) The interest due to the bank will be paid as follows:

(a) the borrower will pay 0.67 of the interest rate, but not less than 3%, and if the interest rate calculated is below 3%, then at that interest rate;

(b) the Agency will pay the remainder, but the interest subsidy cannot be higher than the total amount of aid calculated in accordance with recitals (35) and (43) below.

(28) The guarantees and sureties, as referred to in recital (24), have a fixed term and may be granted up to a level of:

(a) 80% of the drawn amount of the bank loan granted, but not exceeding PLN 2 million, in the case of a guarantee,

(b) 60% of the drawn amount of the bank loan granted, but not higher than PLN 1.5 million, in the case of a surety.

(29) A condition for obtaining aid is that the applicant must present an investment plan.

(30) Value added tax (VAT) will not be eligible for aid, except where it is not-recoverable under national VAT legislation.

Aid for investment in tangible assets and intangible assets on agricultural holdings linked to primary agricultural production

(31) The Polish authorities explained that investments on agricultural holdings will pursue the following objectives:

(a) improvement of the overall performance and sustainability of the agricultural holding, in particular through a reduction of production costs or the improvement and re-deployment of production;

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10 Warsaw Interbank Offered Rate (Polish domestic reference rate for credits).

(b) improvement of the natural environment, hygiene or animal welfare standards, provided that the investment concerned aims at going beyond the Union standard in force;

(c) creation and improvement of infrastructure related to the development, adaptation and modernisation of agriculture, including access to farm land, land consolidation and land improvement.

(32) The following investment projects will be supported:

(a) construction, reconstruction or renovation of buildings,

(b) purchase or installation of machinery, equipment or facilities,

(c) purchase of arable land,

(d) purchase of buildings or structures,

(e) establishment and equipping of orchards or perennial plantations,

(f) equipping of pastures or open-air runs for animals,

(g) purchase or construction of buildings or structures, or purchase and installation of machinery and equipment used for environmental protection or improvement of animal welfare,

(h) purchase and installation or construction of elements of technical infrastructure other than those listed in point (g) above, which have a direct impact on the conditions of conducting agricultural activity;

(i) purchase of computers and software,

(j) general costs directly connected with preparation and implementation of the investment project, which shall not exceed 12% of the bank loan amount,

(k) costs of transport of materials to the site of implementation of the investment projects, up to 2% of the value of these investments.

(33) The purchase of land (recital (32)(c)) is only eligible for aid for an amount not exceeding 10% of the eligible investment costs financed using a bank loan.

(34) Aid will not be granted in respect of the following:

(a) the purchase of production rights, payment entitlements and annual plants;

(b) the planting of annual plants;

(c) the purchase of animals;

(d) investments to comply with Union standards in force;

(e) costs, other than those referred to in recital (32) connected with leasing contracts, such as lessor's margin, interest refinancing costs, overheads and insurance charges;

(f) working capital;

(g) irrigation;

(h) investment made in the production of biofuels within the meaning of Directive 2009/28/EC[11];

(i) production of energy from renewable sources.

(35) The total amount of the aid will not exceed:

(a) In principle, 40% of the eligible costs.

(b) 60% of the eligible costs, if the investment project is implemented by a young farmer within the meaning of Article 2(34) of Regulation No 702/2014[12] or an agricultural producer whose tax liability for agricultural tax for the purchase of an agricultural holding arouse not earlier than five years before the date of submitting the application for a bank loan.

(c) 60% of the eligible costs, if the investment project is implemented on a holding located in areas facing natural or other specific constraints specified in the provisions on the support for the development of rural areas using resources from the European Agricultural Fund for Rural Development.

(d) In addition, the aid intensity referred to in point (a) above is also increased by 20% if the investment project is implemented with the aim of improving the condition of the natural environment or animal welfare, going beyond the requirements laid down in EU legislation; in that case, the increased aid intensity only applies to the additional costs necessary to obtain a level exceeding the Union standards in force and not leading to an increase in production capacity.

(36) In case where, under the present aid schemes, the aid in form of interest subsidies is cumulated with the aid in form of guarantees/sureties, the total value of the aid must not exceed the amount of aid calculated in accordance with recital (35).

Aid for investments in connection with the processing of agricultural products

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[11] Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, OJ L 140, 5.6.2009, p. 16.

[12] The definition of a young farmer in Article 2(34) of Regulation No 702/2014 corresponds to the definition in point 35(29) of the Guidelines.

(37) The Polish authorities declared that the notified schemes cover only processing of products listed in Annex I of the TFEU and that the resulting products are also covered therein.

(38) The Polish authorities explained that investments in the processing and marketing sector will pursue the following objectives:

(a) broadening the range of products offered and better adaptation of products to market requirements;

(b) improving the efficiency of production, in particular by reducing production costs;

(c) improving working conditions and better use of labour resources.

(39) The following investment projects in the processing sector will be supported under the present aid schemes:

(a) construction or renovation of buildings;

(b) purchase or purchase and installation of machinery or equipment intended for:

– storage or preparation of agricultural products for processing with a view to maintaining quality and food safety,

– the processing of agricultural products,

– the storage of products or semi-finished products and their preparation for sale;

(c) purchase or purchase and installation of measuring and monitoring equipment and equipment for control of the production process or storage;

(d) purchase of computers and software for the management of an undertaking and for the control of the production process or storage;

(e) purchase of means of transport necessary for the smooth running of a technological process or for storage;

(f) purchase of specialised means of transport designed for the supply of raw materials or the distribution of products with a view to ensuring compliance with the conditions of food safety or animal welfare;

(g) implementation of quality management systems;

(h) general costs directly linked to the preparation and implementation of investments of an amount not exceeding 12 % of the amount of the bank loan, comprising drawing-up of technical documents, fees for patents or licences, costs of town planning, architectural, building or conservation supervision;

(i) costs of transporting materials to the place at which investments are implemented, up to 2 % of the value of those investments.

(40) The purchase of land is not eligible for aid.

(41) Costs, other than those referred to in recital (39) connected with leasing contracts, such as lessor's margin, interest refinancing costs, overheads and insurance charges, working capital as well as costs related to investments to comply with Union standards in force are not eligible for aid.

(42) Aid will not be granted for food based biofuels.

(43) The total amount of aid will not exceed 40% of the eligible costs.

(44) In case where, under the present aid schemes, the aid in form of interest-rate subsidies is cumulated with the aid in form of guarantees/sureties, the total value of the aid must not exceed the amount of aid calculated in accordance with recital (43).

(45) The Polish authorities assured the Commission that the aid does not concern investments with eligible expenses in excess of EUR 25 million or where the gross grant equivalent of the aid would exceed EUR 12 million.

2.10. Incentive effect and proportionality

(46) The Polish authorities explained that no aid will be granted if the work on the relevant project or activity has already started before an application for aid, together with all necessary supporting documents, was submitted.

(47) The aid application will include at least the applicant's name and the size of the undertaking, a description of the project or activity, including its location and start and end dates, the amount of aid needed to carry it out and the eligible costs. In addition, the applicants must describe in the application, the situation without the aid (counterfactual scenario) and submit documentary evidence in support of the counterfactual described in the application. When receiving an application, the granting authority will carry out a credibility check of the counterfactual and confirm that the aid has the required incentive effect.

(48) In addition, the granting authority will ensure that the aid amount is limited to the minimum on the basis of a ‘net-extra cost approach’. The aid amount should not exceed the minimum necessary to render the project sufficiently profitable and thus it should not lead to an increase of its internal rate of return beyond the normal rates of return applied by the undertaking concerned in other investment projects of a similar kind or, if these rates are not available, to an increase of its internal rate of return beyond the cost of capital of the undertaking as a whole or beyond the rates of return commonly observed in the sector concerned. Furthermore, the granting authority will ensure that the aid amount corresponds to the net extra costs of implementing the investment in the area concerned, compared to the counterfactual scenario in the absence of aid. The method explained will be used together with maximum aid intensities as a cap.

2.9. Cumulation

(49) As regards cumulation, the Polish authorities made the following commitments:

(a) aid under the present schemes may be granted concurrently under several schemes or cumulated with ad hoc aid, but the total amount of State aid for an activity will not exceed the aid ceilings laid down in the Guidelines;

(b) aid under the present schemes may be cumulated with *de minimis* aid, but such cumulation will not result in an aid intensity or aid amount exceeding that fixed in the Guidelines;

(c) aid under the present schemes will not be cumulated with payments referred to in Articles 81(2) and 82 of Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005[13];

(d) aid under the present schemes will not be cumulated with EU funding centrally managed by the institutions, agencies, joint undertakings or other bodies of the EU.

2.10. Other commitments

(50) The Polish authorities confirmed that where a common market organisation, including direct support schemes, financed by the European Agricultural Guarantee Fund (EAGF) places restrictions on the production or limitations on Union support at the level of individual undertakings, holdings or processing plants, no investment which would increase production beyond those restrictions or limitations may receive State aid support.

(51) Poland has informed the Commission that in order to comply with the transparency requirement the publication of the aid scheme and the individual aid grants above EUR 60 000 will be done through the following web page: http://srpp.minrol.gov.pl. Poland has committed that the information will be kept for at least 10 years and will be available for the general public without restrictions.

3. ASSESSMENT UNDER STATE AID RULES

3.1. Presence of State aid within the meaning of Article 107(1) TFEU

(52) According to Article 107(1) of the Treaty, "[s]ave as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market".

(53) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must

13 OJ L 347, 20.12.2013, p. 487.

confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.

(54) The Commission Notice referred to in recital (18) confirms the principle that guarantees given by the State may constitute State aid in the sense of Article 107(1) TFEU. The schemes in question confer an advantage on their recipients who will have access to loans/guarantees at conditions which are more favourable than those available on the market (cf. recitals (19) and (20)). This advantage is granted through State resources (recital (8)), is imputable to the State (recital (12)) and it benefits only undertakings active in the sectors of primary agricultural production and processing of agricultural products in Poland (recital (13)). According to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared to other competing undertakings, by giving it an economic benefit which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition.[14]

(55) Pursuant to the case law of the Court of Justice, aid to an undertaking is capable of affecting trade between Member States where that undertaking operates in a market open to intra-Union trade.[15] The beneficiaries of aid operate in the agriculture sector which is open to competition at EU level[16] and therefore sensitive to any measure in favour of the production in one or more Member States. Therefore, the present schemes are liable to affect trade between Member States.

(56) In light of the above, the conditions of Article 107(1) TFEU are fulfilled. It can therefore be concluded that the notified schemes constitute State aid within the meaning of that Article. They may only be considered compatible with the internal market if they can benefit from any of the derogations provided for in the TFEU.

3.2. Lawfulness of the aid

(57) The aid schemes were notified to the Commission on 13 and 18 March 2015 (recital (1)). They have not been implemented yet. Therefore, Poland has complied with its obligation under Article 108(3) TFEU.

3.3. Compatibility of aid pursuant to Article 107(3)(c) TFEU

(58) Under Article 107(3)(c) TFEU, an aid may be considered compatible with the internal market, if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

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[14] Judgment of the Court of 17 September 1980 in Case 730/79 Philip Morris Holland BV v Commission of the European Communities, ECLI:EU:C:1980:209.

[15] See in particular the judgment of the Court of 13 July 1988 in Case 102/87 French Republic v Commission of the European Communities, ECLI:EU:C:1988:391.

[16] The intra-EU trade of agricultural products in 2015 amounted to: for exports – ca. EUR 318 billion; for imports – ca. EUR 314 billion. Source: Eurostat.

(59) For this derogation to be applicable, the aid must fulfil the requirements of the relevant EU State aid rules.

3.4. Application of the Guidelines

(60) As regards the notified aid schemes, Section 1.1.1.1 ("Aid for investment in tangible assets and intangible assets on agricultural holdings linked to primary agricultural production") and Section 1.1.1.4 ("Aid for investments in connection with the processing of agricultural products and the marketing of agricultural products") of Part II of the Guidelines are applicable.

(61) It follows from point 135 of the Guidelines that the Commission will consider aid for investment in tangible assets and intangible assets on agricultural holdings linked to primary agricultural production compatible with the internal market under Article 107(3)(c) of the Treaty if it complies with the common assessment principles of the Guidelines, the general condition for investment aid set out in point 134 of the Guidelines and with the conditions set out in Section 1.1.1.1 of Part II of the Guidelines.

(62) It follows from point 165 of the Guidelines that the Commission will consider aid for investments in connection with the processing of agricultural products and the marketing of agricultural products compatible with the internal market under Article 107(3)(c) of the Treaty if it complies with the common assessment principles of these Guidelines, the general condition for investment aid set out in point 134 of the Guidelines and with the conditions set out in Section 1.1.1.4 of Part II of the Guidelines.

3.4.1. General condition for investment aid

(63) According to point 134 of the Guidelines, aid for investment under Sections 1.1.1.1 and 1.1.1.4 of Part II of the Guidelines must comply with the following condition: where a common market organisation, including direct support schemes, financed by the European Agricultural Guarantee Fund (EAGF) places restrictions on the production or limitations on Union support at the level of individual undertakings, holdings or processing plants, no investment which would increase production beyond those restrictions or limitations may receive State aid support. The Polish authorities committed to respect this condition (recital (50)) and thus the Commission considers the condition set out in point 134 of the Guidelines to be fulfilled.

3.4.2. Aid for investment in tangible assets and intangible assets on agricultural holdings linked to primary agricultural production

(64) In line with point 136 of the Guidelines, the aid will be given for interest rates and guarantees/sureties on loans taken for the investment in tangible and intangible asset on agricultural holdings linked to the primary agricultural production (recital (5)(a)).

(65) Points 137-142 of the Guidelines are not relevant in the present case (cf. recital (34)(h) and (34)(i)).

(66) Point 143 of the Guidelines sets out the objectives to be pursued by the supported investments. Based on the information provided by the Polish authorities (recital (31)), the Commission agrees that these aid schemes pursue the objectives set out in point 143(a)-(c) of the Guidelines.

(67) As demonstrated in recitals (32) and (34)), the costs which are eligible under the present aid schemes are in line with the definition of the eligible costs in points 144(a)-(d) and 145 of the Guidelines. In addition, the purchase of land is only eligible for aid for an amount not exceeding 10% of the eligible investment costs financed using a bank loan (recital (33)), which is in line with point 144(a) of the Guidelines.

(68) Points 147-151 of the Guidelines are not relevant in the present case (cf. recital (34)(g)).

(69) The aid intensity for eligible costs under the present scheme amounts in principle to 40% and is increased by 20 percentage points in cases which correspond to point 153 (a),(c) and (e) of the Guidelines (recital (35)). It will thus not exceed the maximum intensity provided for in points 152 in connection with 153 of the Guidelines.

(70) Taking the above into consideration, the Commission considers that the requirements regarding the compatibility of aid under Section 1.1.1.1 of Part II of the Guidelines are fulfilled.

3.4.3. *Aid for investments in connection with the processing of agricultural products and the marketing of agricultural products*

(71) In line with point 166 of the Guidelines, no aid will be granted for food based biofuels under the present schemes (recital (42)).

(72) In line with point 167 of the Guidelines, the present schemes apply to aid for investments in tangible assets and intangible assets in connection with the processing of agricultural products as referred in point 35.11 of the Guidelines (see recitals (5) and (37)).

(73) As demonstrated in recitals (39) and (41) above, the costs which are eligible under the present notified aid schemes are in line with the definition of the eligible costs in points 169(a)-(d) and 170 of the Guidelines.

(74) The aid intensity is set up at 40% (recital (43)) and respects therefore the requirements of point 171 of the Guidelines.

(75) Point 173 of the Guidelines requires that individual aid exceeding the notification threshold referred to in point 37(a) (eligible costs exceeding EUR 25 million, or grant equivalent exceeding EUR 12 million) must be notified to the Commission. It follows from recital (45) that point 173 of the Guidelines is not applicable in the present case.

(76) Taking the above into consideration, the Commission considers that the requirements regarding the compatibility of aid under Section 1.1.1.4 of Part II of the Guidelines are fulfilled. The condition of point 168 (c) of the Guidelines is thus fulfilled as well.

3.4.4. *Common assessment principles*

(77) According to points 38, 42, 135 and 165 of the Guidelines, the common assessment principles apply to aid granted in accordance with Article 107(3)(c) TFEU.

Contribution to a common objective

(78) As described in recital ((5)) above, the objective of the present aid schemes is to grant support to large undertakings for investments in tangible assets and intangible assets in the primary production and processing sectors. The schemes contribute to a common objective in line with points 43 and 44 of the Guidelines. They are rural development-like measures which are consistent with the rural development framework (recital (7)), and the conditions of point 47 of the Guidelines are met.

(79) The Polish authorities have assured that investment projects that may have a negative impact on the environment will be declared eligible only after an evaluation of the environmental impact and that they will check, before approving projects, that all proposed investments comply with the provisions of EU and national environmental legislation. The Commission considers therefore that point 52 of the Guidelines is respected.

Need for State intervention - Appropriateness of aid

(80) The notified aid schemes fulfil the specific conditions laid down in Sections 1.1.1.1 and 1.1.1.4 of Part II of the Guidelines (recitals (70) and (76)). In addition, Poland demonstrated the advantages of such a national aid instrument compared to the corresponding rural development programme measure (recital (7)). Against this background, the Commission considers, in line with points 55, 57 and 58 of the Guidelines that the aid is necessary and that it is appropriate. Furthermore, given that the aid instruments under the present aid schemes are loan guarantees and sureties (recital (17)), they can be considered as less distortive than instruments which provide indirect pecuniary advantages (cf. point 62 of the Guidelines) and thus as appropriate instruments.

Incentive effect

(81) It follows from recital (46) that the relevant activity will only start after the applicant has submitted an aid application to the granting authority. It follows from the same recital that the content of the aid application meets the minimum requirements laid down in point 71 of the Guidelines. In addition, in line with points 72 and 73 of the Guidelines, the applicants will describe the situation without the aid and submit documentary evidence in support of the counterfactual scenario described in the application, and the national authority, when receiving an application, will carry out a credibility check of the counterfactual scenario and confirm that the aid has the required incentive effect (recital (47)). The Commission considers that the requirement of incentive effect is therefore complied with.

Proportionality of the aid

(82) According to points 82 and 83 of the Guidelines, aid is considered to be proportionate if the aid amount does not exceed the eligible costs and maximum aid intensities are applied. The aid amount per beneficiary must be limited to the minimum needed to achieve the common objective aimed for.

(83) As demonstrated by the Polish authorities (recitals (35) and (43)), the maximum aid intensity is set up within the limits of the Guidelines.

(84) VAT will not eligible for aid, except where it is not-recoverable under national legislation (recital (30)) which is in line with point 86 of the Guidelines.

(85) The aid will be granted in form of interest rate subsidies and loan guarantees/sureties (recital (17)) and the aid amount will correspond to the gross grant equivalent of the aid (recital (18)), which is in line with point 87 of the Guidelines. The aid will be granted in several instalments and the relevant discounting rules fulfil the requirements of point 88 of the Guidelines (recital (18)).

(86) According to points 95-97 of the Guidelines concerning additional conditions for investment aid granted to large enterprises under notified schemes, Member States have to ensure that the aid amount is limited to the minimum on the basis of a 'net-extra cost approach'. The aid amount should not exceed the minimum necessary to render the project sufficiently profitable, for example, it should not lead to an increase of its internal rate of return beyond the normal rates of return applied by the undertaking concerned in other investment projects of a similar kind or, if these rates are not available, to an increase of its internal rate of return beyond the cost of capital of the undertaking as a whole or beyond the rates of return commonly observed in the sector concerned. Furthermore, the Member State must ensure that the aid amount corresponds to the net extra costs of implementing the investment in the area concerned, compared to the counterfactual scenario in the absence of aid. The method explained in this recital must be used together with maximum aid intensities as a cap. Based on the information submitted by the Polish authorities (recital (47)), the Commission considers that the said conditions are fulfilled.

(87) It can be therefore concluded that the requirement of proportionality is met.

Cumulation of aid

(88) Under point 99 of the Guidelines aid may be granted concurrently under several schemes or cumulated with ad hoc aid, provided that the total amount of State aid for an activity or project does not exceed the aid ceilings laid down in these Guidelines. Those conditions are fulfilled in the present schemes (see recital (49)).

Avoidance of undue negative effects on competition and trade

(89) The Polish authorities have analysed the risk of distortion of competition when implementing the notified aid schemes.

(90) As regards investments in the primary production sector, given that the conditions and the relevant maximum aid intensities laid down in Section 1.1.1.1 of Part II of the Guidelines are respected (recital (70)), it can be concluded that no significant

distortion of competition and trade could be identified in line with point 113 of the Guidelines.

(91) As regards investments in the processing sector, the relevant conditions and the relevant maximum aid intensities laid down in Section 1.1.1.4 of Part II of the Guidelines are respected as well (recital (76)). In addition, the Polish authorities demonstrated that the aid intensity is set up at the minimum which still ensures the incentive effects for an undertaking to launch an investment (recital (47)), while the form of aid (recital (17)) is potentially less distorting than forms which provide a direct pecuniary advantage. Moreover, large investment projects are expressly excluded from the aid schemes (recital (45)). The supported projects are also limited to certain thresholds (recitals (25) and (28)). It can, therefore, be concluded that no significant distortion of competition and trade can be identified in line with points 115 and 116 of the Guidelines.

Transparency

(92) Poland has committed to comply with the transparency requirements under the Guidelines (recital (51)).

3.4.5. Other commitments

(93) The Commission notes that undertakings in difficulty are excluded from the support in line with point 26 of the Guidelines (recital (15)) and that Poland will suspend the payment of the notified aid if the beneficiary still has at its disposal an earlier unlawful aid that was declared incompatible by a Commission decision in line with point 27 of the Guidelines (recital (16)).

3.4.6. Duration

(94) Pursuant to point 719 of the Guidelines, the Commission only authorizes schemes of limited duration. Aid schemes other than those benefiting from co-financing under Regulation (EU) No 1305/2013 and its implementing regulation should not apply for more than seven years. It follows from recital (11) that this condition is fulfilled.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified schemes on the grounds that they are compatible with the internal market pursuant to Article 107(3)(c) TFEU.

If any parts of this letter are covered by the obligation of professional secrecy according to the Commission communication on professional secrecy in State aid decisions[17] and should not be published, please inform the Commission within fifteen working days of notification of this letter. If the Commission does not receive a reasoned request by that deadline Poland will be deemed to agree to the publication of the full text of this letter. If Poland wishes certain information to be covered by the obligation of professional secrecy

[17] Commission communication C(2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions, OJ C 297, 9.12.2003, p. 6.

please indicate the parts and provide a justification in respect of each part for which non-disclosure is requested.

Your request should be sent electronically via the secured e-mail system Public Key Infrastructure (PKI) in accordance with Article 3(3) of Commission Regulation (EC) No 794/2004[18], to the following address: agri-state-aids-notifications@ec.europa.eu.

For the Commission

Phil HOGAN
Member of the Commission

[18] Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140, 30.4.2004, p. 1).